

***United States Court of Appeals
for the Second Circuit***



APPENDIX

76-1460

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

B
P/S

DOCKET NO. 76-1460

UNITED STATES OF AMERICA,

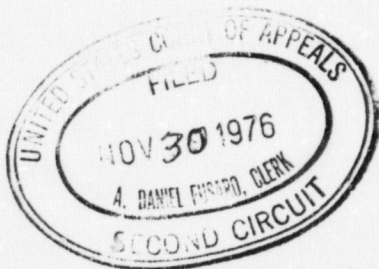
APPELLEE,

V.

JESUS ORTIZ,

APPELLANT.

APPENDIX TO BRIEF OF APPELLANT
JESUS ORTIZ



RICHARD S. CRAMER
ASSISTANT FEDERAL PUBLIC DEFENDER
450 MAIN STREET
HARTFORD, CONNECTICUT 06103
ATTORNEY FOR APPELLANT

PAGINATION AS IN ORIGINAL COPY

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OFFENSE NO. 0506
DEFENDANT ORIGINATOR 205 2
COUNTY 3/25 76 29 2
OFFENSE NAME ORIGINATOR
FELONY ORIGINATOR
LAST FIRST MIDDLE
ORTIZ, JESUS a/k/a
"Chombo"

U.S. DISTRICT COURT
OFFENSES CHARGED
ORIGINAL COUNTS
21:846 conspire to possess intent to distr.
Cocaine, II (Cts. 1) 1
21:841(a)(1) possess w/ intent and did distr.
Cocaine, II (Cts. 2 & 3) 2
FILED
SUPERSEDING COUNTS

U.S. MAIL CASE NO. 76-41-MH
BAIL • RELEASE
AMT. ☐ Fugitive
Denied ☐ Set ☐ Pers. Recog
PSA ☐
Date 10/10/76
4/6/76
10% Deposit ☒
Surety Bond ☐
Collateral ☐
3rd ☐
Other ☐
Status Changed (See Docket) ☐
Bail Not Made ☐
On Government's Motion ☐

II. KEY DATES & INTERVALS
ARREST or U.S. Custody Began 4/6/76
High Risk Date 3/25/76
Indictment Information ☐
Indict. Waived ☐
Superseding ☐
Indict/Info ☐
In Charging District
ARRAIGNMENT
1st Plea 4/26/76
Final Plea 7/28/76
TRIAL
Trial Set For 7/7/76
Trial Began 7/27/76
Trial Ended 7/28/76
Disposition of Charges 7/28/76
9/27/76
Convicted ☒
Acquitted ☐
Dismissed ☐
On All Charges ☒
On Lesser Offense(s) ☐
WOP ☐
WP ☐
On Government's Motion ☐

MAGISTRATE
DATE INITIAL/NO. INITIAL APPEARANCE DATE
PRELIMINARY EXAMINATION OR REMOVAL HEARING
Date Scheduled Date Held
Tape Number
OUTCOME
DISMISSED
HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

U.S. Attorney or Asst.
Peter C. Dorsey
Thos. P. Smith, Asst.
ATTORNEYS
Richard Cramer, F.D.
450 Main St
H.T.D., Com

* Show last names and suffix numbers of other defendants on same indictment information.

MELLENDEZ, 1

DOCUMENT NO. 1
PROCEEDINGS
EXCLUDABLE DELAY (a) (b) (c) (d)
1976
3/25 Indictment, filed. Bench Warrant to issue and bond to be set by Magistrate. TO BE SEALED. (Blumenfeld, J.)
3/25 Bench Warrant issued and handed US Marshal.
4/7 Appearance Bond in the amount of \$10,000 with 10% cash provision, filed. Surety is Josefa Clavijo.
4/13 Government's Motion For Unsealing of Indictment with Order thereon, filed. (Blumenfeld, J.) m-4/13/76
4/23 Magistrate's papers filed...docket, Magistrate's Temporary Commitment with return thereon, Bail Reform Act No. 1, Warrant for Arrest of Defendant with return thereon, and CJA 23, Financial Affidavit. (Eagan, Mag.)
4/23 Magistrate's tapes filed. (Eagan, Mag.)
4/26 Interpreter Lucia Maynard sworn. PLEA of not guilty entered to all counts. Same bond cont'd. Motions in 2 wks., Govt. response in 1 wk. later. Case to be assigned for trial. (Clarie, J.)
5/6 CJA 23, Financial Affidavit, filed.
5/7 Motion to Reveal Identity of Informants, filed.
5/18 Memorandum in Support of Motion to Reveal Identity and Whereabouts of Informant, filed.

ATTY
976

IV PROCEEDINGS CONTINUED
USA vs Jesus Ortiz aka "Chombo"
Jury Assg. List. Cal. - 6 jury case for tomorrow.

7/6

(Clarie, J.)

7/7

Jury Trial - Myda Kivchak sworn as interpreter.
Notice filed re previous convictions. (Clarie, J.)

7/7

Jury Trial - Interpreter M Kivchak previously sworn to serve on this case. 31 jurors remain - already sworn on Voir Dire. Voir Dire questions filed by Atty. Cramer. Panel of 28 drawn. / There being only one juror left & counsel not agreeing to his use as alternate Court advises Jury they will not be sworn until they begin to serve on case. Jury & remainder of panel excused until further order of the Court. Jury to be notified when case will go forward. (Clarie, J.)

7/8

Court Reporter's notes and Sound Recordings of Proceedings held on April 26, 1976, filed in Hfd. (Sperber, R.)

7/8

Motion For Severance and Affidavit of Richard S. Cramer, filed.

7/9

Motion To Prohibit Use of Prior Conviction For Impeachment Purposes, filed.

7/12

Endorsement entered and filed on Motion To Prohibit Use of Prior Conviction For Impeachment Purposes, "July 12, 1976. Deft. Ortiz' motion to prohibit use of prior conviction for impeachment purposes is denied. So Ordered." (Clarie, J.) M. 7-12-76. Copies sent to Counsel of Record. Endorsement entered and filed on Motion For Severance, "July 12, 1976. Paragraph #1, #2, and #3 are denied; paragraph #4 is granted. So Ordered." (Clarie, J.) M. 7-12-76. Copies sent to counsel of record.

7/12

Motion For Selection of Trial Date, filed by Govt.

7/13

Endorsement entered and filed on Motion For Selection of Trial Date, "7/13/76. The case is assigned as the first case on July 27, 1976; So Ordered." (Clarie, J.) M. 7-13-76. Copies mailed to counsel of record.

7/13

Letter dated July 13, 1976 from Thomas P. Smith, filed.

7/13

Endorsement entered and filed on Motion to Reveal Identity of Informants, "7/13/76. In view of the Govt's. compliance as demonstrated by the filed correspondence of even date, the Court finds the issue is now moot." (Clarie, J.) M. 7-13-76. Copies sent to counsel of record.

7/13

CJA 21 executed (Cramer, F.P.D.) and mailed to A.O. for payment.

Continued

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

BEST COPY AVAILABLE

ORTIZ, Jesus a/k/a "Chombo"

16

29

2

Yr. Docket No. Def.

DATE 1976	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
7/27	(Document No. 1) <u>JURY TRIAL</u> - Govt. waives to sever case of Enrique Melendez. Motion granted. Govt. moves to allow Thurl Stalnaker, Jr. to appear before Court. Stalnaker is a law student in U.S. Atty's. office. Appearance filed. Motion granted. M. 7-28-76. Govt. moves that all witnesses be sequestered except for case agent & prosecutors investigator. Mayda Kivchak sworn as interpreter. Govt's. Memorandum in Support of the Admissibility of Similar Criminal Acts to Show Intent Knowledge, modus operandi Identity & Lack of Mistake. Jury of 12 reports & are sworn by Clerk. Three Govt. witnesses sworn & testified. Three Govt. exhibits, 1, 2 & 3, filed. Def's. Exh. A, filed. Def's. Exh. B, marked for identification. Argument by both Attorneys on prior similar acts. Decision reserved. Govt. rests at 3:12 p.m. Two def's. witnesses sworn & testified. Defense rests at 4:16 p.m. One Govt. witness sworn & testified. Govt. rests at 4:32 p.m. Court adjourned at 4:34 p.m. until tomorrow at 10:00 a.m. (Clarie, J.)				
7/28	Requests to Charge, filed.				
7/28	<u>JURY TRIAL</u> continues. Atty. Cramer moves to strike all hearsay testimony of events on Feb. 9 & Feb. 10 concerning conspiracy. Motion denied. Atty. Cramer moves for Judgment of Acquittal. Motion denied. Jury of 12 report. Summations from 10:15 a.m. to 11:15 a.m. Court charge from 11:32 a.m. to 12:15 p.m. Jury retires at 12:16 p.m. Atty. Cramer states exceptions to charge & moves for mistrial because of charge on failure of defendant to testify. Motion denied. Indictment & exhibits given to jury at 12:17 p.m. At 1:00 p.m., at jurors request, Court orders lunch for jury. Bill of \$32.45 from Franklin Giant Sandwich Shop. Jury returns to courtroom at 2:48 p.m. with a verdict of <u>guilty</u> on all three counts. Verdict ordered recorded. Atty. Smith argues for increase of bond - Bond \$10,000 with full surety. Court adjourned at 3:04 p.m. (Clarie, J.)				
7/30	Court Reporter's notes of Proceedings held on July 7, 1976, filed in Hfd. (Sperber, R.)				
8/10	Order for Return of Bond, filed. (Newman, J.) m8/11/76				
9/13	<u>DISPOSITION</u> - Over to 9/27/76 at 10:00 a.m. (Clarie, J.)				
9/27	<u>DISPOSITION</u> - 7 yrs. impr. on each of cts. #1, 2 & 3 to be followed by a Special Parole period of 3 yrs. imposed to provisions of 21 USC 841. Said sentences on each of said counts #1, 2 & 3 are to be served concurrently. Marie Foden sworn as interpreter. (Clarie, J.)				
9/27	Judgment and Commitment Order, filed. (Clarie, J.) M.9-28-76. Two attested copies handed US Marshal in Hartford and one attested copy handed US Probation Officer in Hartford.				

Criminal H-76-29

		Criminal R-76-29	
DATE . 1976	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY	
	(Document No.)	(a)	(b) (c) (d)
9/28	Notice of Appeal, filed. Copies sent to counsel of record.		
9/29	Certified copy of Notice of Appeal and Docket Entries mailed to Clerk, USCA		
9/29	Court Reporter's notes of Proceedings held on July 27 & 28, 1976, filed in Hartford. (Sperber, R.)		
9/30	Notice of Parts of Transcript Ordered and Proposed Issues for Appeal, filed.		
9/28	CJA 21 authorizing transcript, filed.(Clarie,J.)		

App. 4

Interval
(per Section II)

Start Date
End Date

Ltr. Total
Code Day

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 1176-29

ENRIQUE MELENDEZ, a/k/a "Kiki",
and JESUS ORTIZ, a/k/a "Chombo"

I N D I C T M E N T

THE GRAND JURY CHARGES:

COUNT I

On or about the 10th day of February, 1976 at Hartford, in the District of Connecticut, the defendants ENRIQUE MELENDEZ and JESUS ORTIZ did unlawfully, wilfully and knowingly combine, conspire, confederate and agree with each other, and with others to the Grand Jury unknown, to commit offenses against the United States, to wit: to violate Title 21, United States Code, Section 841(a)(1), by knowingly and intentionally possessing with intent to distribute a controlled substance, to wit: a quantity of cocaine, and to knowingly and intentionally distributing the aforesaid controlled substance, i.e., said quantity of cocaine; all in violation of Title 21, United States Code, Section 846.

OVERT ACTS

In furtherance of the aforesaid conspiracy, and to effect the objects thereof, the defendants and co-conspirators did perform the following overt acts:

1. On February 10, 1976 ENRIQUE MELENDEZ and JESUS ORTIZ had a conversation
2. On February 10, 1976 JESUS ORTIZ handed a package to ENRIQUE MELENDEZ.

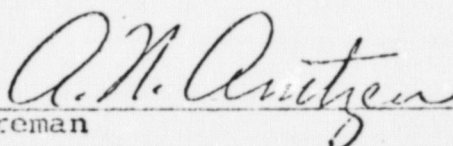
COUNT TWO

On February 10, 1976 at Hartford, in the District of Connecticut, ENRIQUE MELENDEZ and JESUS ORTIZ, the defendants herein, knowingly and intentionally did possess with intent to distribute a quantity of cocaine (a Schedule II Controlled Substance), in violation of Title 21, United States Code, Section 841(a) (1).

COUNT THREE

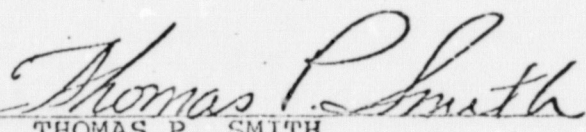
On February 10, 1976 at Hartford in the District of Connecticut, ENRIQUE MELENDEZ and JESUS ORTIZ, the defendants herein, knowingly and intentionally did distribute a quantity of cocaine (a Schedule II Controlled Substance), in violation of Title 21, United States Code, Section 841(a) (1).

A TRUE BILL.


Foreman

PETER C. DORSEY
United States Attorney

BY


THOMAS P. SMITH
Assistant U. S. Attorney

FILED

JUL 12 1976

OFFICE OF THE FEDERAL
PUBLIC DEFENDER

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

FILED

JUL 9 3 43 PM '76

UNITED STATES OF AMERICA

V.

JESUS ORTIZ

CRIMINAL NO. H-76-4291

CLERK
U.S. DISTRICT COURT
HARTFORD, CONN.

MOTION OF DEFENDANT ORTIZ TO PROHIBIT USE
OF PRIOR CONVICTION FOR IMPEACHMENT PURPOSES

The defendant, JESUS ORTIZ, through his attorney hereby requests an order that the Government not use his 1972 conviction for sale of heroin for impeachment purposes if defendant should testify in his own behalf in the above-captioned case.

The defendant maintains that because of the similarity of the 1972 offense to the charges now before the Court, evidence of the prior conviction would be far more prejudicial than it would be probative. Exclusion is sought pursuant to Rule 609(a)(1) and Rule 403 of the Federal Rules of Evidence.

Were it not for the prior conviction, defendant would testify in his own behalf.

Dated at Hartford, Connecticut, this 7th day of July, 1976.

THE DEFENDANT
JESUS ORTIZ

BY

Richard S. Cramer
Richard S. Cramer
Assistant Federal Public Defender
450 Main Street
Hartford CT 06103
(203-244-3357)

Defendant's motion to prohibit use of prior conviction for impeachment purposes is denied.

Do not use

FILED
JUL 12 12 13 PM '76

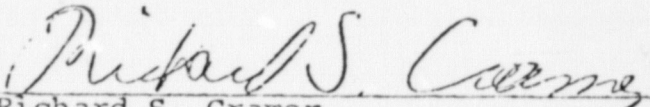
U.S. DISTRICT COURT
HARTFORD, CONN.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing motion was mailed, postage prepaid, this 9th day of July, 1976, to:

Thomas P. Smith, Esq.
Assistant United States Attorney
450 Main Street
Hartford CT 06103

F. Mac Buckley, Esq.
Buckley & Santos
51 Russ Street
Hartford CT 06106


Richard S. Cramer
Assistant Federal Public Defender

FPI-83-2-3-75-50M-237

1 Interpreter, so that it will make it easier for
2 her to follow?

3 Call the jury.

4 (In the presence of the jury:)

5 THE COURT: The Court has given the
6 Interpreter a copy of the Court's charge. And
7 if I should read too fast, just raise your hand,
8 and I shall try to slow up enough to make it
9 easier for you.

10 THE INTERPRETER: Thank you, your Honor.

11 THE COURT: Now that you have heard the
12 evidence and the arguments of counsel, the time
13 has come to instruct you as to the law governing
14 this case.

15 Although you as jurors are the sole judges
16 of the facts, you are duty bound to follow the
17 law as stated in the instructions of the Court,
18 and to apply the law so given to the facts as you
19 find them, from the evidence which is before you.

20 You are not to single out one instruction of
21 the Court alone as stating the law, but you must
22 consider the instructions as a whole. Neither are
23 you to be concerned with the wisdom of any rule
24 of law. Regardless of any opinion you may have
25 as to what the law ought to be, it would be a

1 violation of your sworn duty to base a verdict
2 upon any other view of the law than that given in
3 the instructions of the Court.

4 Now, the indictment, the document which I
5 hold here, the original of which you shall have
6 with you in the jury room, is but a formal
7 method of accusing the defendant of a crime. It
8 is not evidence of any crime against the accused
9 in this case, and does not create any presumption,
10 nor permit any inference of guilt.

11 The law presumes a defendant to be innocent
12 of crime. Thus, at the moment a defendant
13 begins the trial, he stands before you free from
14 any bias or prejudice or burden arising from his
15 position as the accused. So far as you are
16 concerned, he then was innocent, and he continues
17 innocent throughout the trial and during the
18 deliberations of the jury, and is overcome when
19 and only when his guilt is established beyond a
20 reasonable doubt.

21 This presumption also requires that if a
22 piece of evidence is offered which is capable of
23 two reasonable constructions, one of which is
24 consistent with innocence, it must be given that
25 construction.

1 Whether the burden of proof resting upon the
2 Government is sustained depends not on the number
3 of witnesses, or the quantity of the testimony,
4 but upon the nature and the quality of the
5 testimony.

6 In order to convict one accused of crime
7 the jury must be satisfied beyond a reasonable
8 doubt of the defendant's guilt. A mere
9 preponderance of the evidence is not sufficient.

10 And if a reasonable doubt does exist in the
11 minds of the jury, they must acquit the defendant.
12 If the evidence justifies in your judgment the
13 conclusion that the accused is guilty, so as to
14 exclude every other reasonable doubt as to the
15 guilt of the defendant, then of course you will
16 find him guilty.

17 The term "reasonable doubt" means just what
18 the term implies. By "reasonable doubt" I do not
19 mean to be understood as stating that the
20 defendant must be found guilty beyond all doubt
21 whatsoever, but beyond a doubt founded in reason,
22 and arising from the evidence. Reasonable
23 doubt is a doubt arising from the evidence or
24 from a lack of evidence, after a consideration of
25 all the evidence.

1 It is not a vague, speculative, imaginary
2 something, but just such doubt as would cause
3 reasonable men and women to hesitate to act upon
4 it in matters of importance to themselves.

5 Reasonable doubt means such doubt as will
6 leave the juror's mind, after a candid and
7 impartial consideration of all the evidence,
8 so undecided that he or she is unable to say that
9 he or she has an abiding conviction or assurance
10 of the defendant's guilt.

11 The law does not require a person to be
12 proven guilty beyond a mathematical certainty,
13 but only a moral certainty.

14 If after you have considered and weighed
15 all the evidence in this case, in the light of
16 the law as the Court will have given it to you,
17 you have a firm, full and abiding conviction, to
18 a moral certainty, that the defendant is guilty
19 as charged in the indictment, then this guilt
20 has been established beyond a reasonable doubt.

21 If you do not have a full, firm and abiding
22 conviction, then guilt has not been established
23 beyond a reasonable doubt, and then you should
24 then acquit the defendant.

25 In order to convict one accused of crime,

1 all of the elements of the crime must be proven
2 beyond a reasonable doubt. Therefore, unless the
3 jury concludes that all the material elements of
4 said crime, as alleged, have been committed by
5 the defendant, and said elements have been proved
6 beyond a reasonable doubt, the jury must bring in
7 a verdict of not guilty.

8 Now, in the remainder of what I have to say
9 to you in this jury charge, I shall use the word
10 "prove" or "proved" with reference to the burden
11 which rests upon the Government. And I shall
12 speak to you of your finding various facts or
13 elements in the case.

14 But, throughout you will understand that when
15 I say the Government has to prove a fact to you,
16 I mean it has to prove it to you, that fact, with
17 this degree of proof that I've just defined: that
18 is, beyond a reasonable doubt, even though I may
19 not repeat those exact words.

20 When I say you must find a fact, I mean you
21 must find it proven beyond a reasonable doubt,
22 even though I simply use the word "find".

23 Now, there are two types of evidence from
24 which a jury may properly find a defendant guilty
25 of an offense. One is direct evidence, such as

1 the testimony of an eye witness. The other is
2 circumstantial evidence, the proof of a chain of
3 circumstances pointing to the commission of the
4 offense.

5 As a general rule the law makes no
6 distinction between direct and circumstantial
7 evidence, but simply requires that before
8 convicting a defendant the jury must be satisfied
9 beyond a reasonable doubt from all of the
10 evidence in the case.

11 An inference is a deduction or conclusion
12 which reason and common sense leads the jury to
13 draw from facts which have been proved. In
14 arriving at your decision, you, the jury, may
15 draw inferences from those facts which are
16 admitted or those facts which you find to have
17 been proven beyond a reasonable doubt.

18 However, no inference is reliable which is
19 drawn from facts which are themselves uncertain.
20 You, the jury, should not indulge in speculation
21 or conjecture.

22 Now, a presumption is a conclusion which
23 the law requires the jury to make from particular
24 facts, in the absence of convincing evidence to
25 the contrary. A presumption continues in effect

1 until overcome or outweighed by the evidence to
2 the contrary. But, unless so outweighed, the
3 jury are bound to find in accordance with the
4 presumption.

5 This defendant is presumed innocent unless
6 you find beyond a reasonable doubt that he is
7 guilty of the offenses with which he is charged.

8 Now, you all notice on the indictment, which
9 you will have with you in the jury room, the name
10 of one other person appears thereon as a
11 defendant; namely, Enrique Melendez, also known
12 as Kiki. For the purposes of this trial you will
13 concern yourselves only with the charges against
14 the defendant, Jesus Ortiz. I think I will
15 follow the pronounciation used by the prosecutor,
16 and the defense counsel; I understand in Spanish
17 that the "J" is pronounced as an "H". So counsel
18 has been using, probably, the correct
19 pronounciation, Jesus Ortiz. And I will use that
20 thereafter. Jesus Ortiz, also known as "Chombo".
21 And that has been testified to as being a
22 nickname for Jesus Ortiz. He is the only person
23 being tried at this time.

24 The indictment against the defendant, Ortiz,
25 contains three separate counts. Each count is a

1 separate and distinct cause of action, and each
2 count embodies or contains allegations which
3 allege a separate and distinct claim under the
4 statute.

5 The mere fact that you may find the
6 defendant guilty on one count does not necessarily
7 affect his guilt or innocence on any other count.

8 Now, the first count of the indictment
9 charges: "On or about the 10th day of February,
10 1976, at Hartford, in the District of Connecticut,
11 the defendants, Enrique Melendez and Jesus Ortiz,
12 did unlawfully, willfully and knowingly combine,
13 conspire, confederate and agree with each other,
14 and with others to the grand jury unknown, to
15 commit offenses against the United States, to wit:
16 to violate Title 21, U.S. Code, Section 841(a)(1),
17 by knowingly and intentionally possessing, with
18 intent to distribute, a controlled substance,
19 to wit: a quantity of cocaine. And to knowingly
20 and intentionally distribute the aforesaid
21 controlled substance, said quantity of cocaine,
22 all in violation of Title 21, U.S. Code,
23 Section 846.

24 "In furtherance of the aforesaid conspiracy,
25 and to effect the objects thereof, the defendants

1 and co-conspirators did perform the following
2 overt acts: On February 10, 1976, Enrique
3 Melendez and Jesus Ortiz had a conversation;
4 and second, on February 10, 1976, Jesus Ortiz
5 handed a package to Enrique Melendez."

6 Those are the overt acts. The statute with
7 which the defendant Ortiz is charged in this
8 first count is known as the conspiracy statute,
9 and it provides, and I quote: "Any person who
10 attempts or conspires to commit any offense
11 defined in the Drug Control Act, is punishable
12 by imprisonment or fine, or both, which may not
13 exceed the maximum punishment prescribed for
14 the offense, the commission of which was the
15 object of the attempt or conspiracy."

16 The substantive offenses with which the
17 defendant is charged are set out in the second
18 and third counts, under Title 21, Section 841,
19 and they relate to the violation of federal
20 statutes dealing with possession with intent to
21 distribute or dispense cocaine, and the
22 distribution and dispensing of cocaine, a
23 controlled substance. These are the acts or
24 offenses which the first count charges the
25 defendants conspired to commit.

1 Now, in order to establish the offense of
2 conspiracy charged in the first count of the
3 indictment, the evidence must show beyond a
4 reasonable doubt the following four elements:

5 First, that the conspiracy described in the
6 indictment was formed and existing at or about
7 the time alleged;

8 Second, that the accused willfully became
9 a member of the conspiracy;

10 Third, that one of the alleged conspirators
11 named in the indictment thereafter committed at
12 least one of the overt acts charged in the
13 indictment at or about the time and place alleged;
14 and

15 Fourth, that such overt act or acts were
16 committed in furtherance of some object or purpose
17 of the conspiracy as charged.

18 Now, if the jury should find beyond a
19 reasonable doubt from the evidence in the case
20 that the existence of the conspiracy charged
21 in the indictment has been proved, then proof of
22 the conspiracy offense as charged is complete.
23 And it is complete as to every person found by
24 the jury to have been willfully a member of the
25 conspiracy at the time.

1 the term "overt act" is meant any act
2 committed by a defendant in an effort to effect
3 or accomplish some object or purpose of the
4 conspiracy. The overt act need not be in itself
5 criminal in nature, if considered separately and
6 apart from the conspiracy. It may be as innocent
7 as the act of a man walking across the street,
8 or driving an automobile, or using a telephone,
9 or nodding his head.

10 It must, however, be an act which follows
11 and tends toward the accomplishment of the plan
12 or scheme agreed upon, and must be knowingly
13 done in furtherance of some object or purpose
14 of the conspiracy, as charged in the indictment.

15 If you find from the evidence, beyond a
16 reasonable doubt, that the existence of the
17 conspiracy charged in the indictment has been
18 proven, and that during the existence of that
19 conspiracy at least one of the overt acts
20 alleged was knowingly done by the defendants, or
21 one of them, in furtherance of some object or
22 purpose of the conspiracy as charged, then proof
23 of the conspiracy as charged becomes complete.
24 And it is complete as to these defendants, if you
25 find they had been knowingly and willfully a member

1 of the conspiracy at the time the overt act was
2 committed.

3 Now, what is a conspiracy? Simply, a
4 conspiracy is a combination of two or more persons,
5 by concerted action, to accomplish some unlawful
6 purpose, or to accomplish some lawful purpose by
7 unlawful means.

8 So a conspiracy is a kind of partnership
9 in criminal purposes, in which each member becomes
10 the agent of every other member. The gist of
11 the offense is a combination or agreement to
12 disobey or to disregard the law.

13 Mere similarity of conduct among various
14 persons, and the fact that they may have been
15 associated with each other, may have assembled
16 together and discussed common aims and interests,
17 does not necessarily establish proof of the
18 existence of a conspiracy.

19 However, the evidence in the case need not
20 show that the members entered into any expressed
21 or formal agreement, or that they directly, by
22 words spoken, or in writing, stated between
23 themselves what their object or purpose was to be,
24 or the details thereof, or the means by which the
25 object or purpose was to be accomplished.

1 What the evidence in the case must show
2 beyond a reasonable doubt, in order to establish
3 the proof that a conspiracy existed, is that the
4 members in some way or manner, or through some
5 contrivance, positively or tacitly came to a
6 mutual understanding, to try to accomplish a
7 common and unlawful plan.

8 The evidence in the case need not establish
9 that all the means or methods set forth in the
10 indictment were agreed upon to carry out the
11 alleged conspiracy, nor that all means or methods
12 which were agreed upon were actually used or
13 put into operation; nor that all of the persons
14 charged to have been members of the alleged
15 conspiracy were such.

16 What the evidence in the case must
17 establish beyond a reasonable doubt is that the
18 alleged conspiracy was knowingly formed, and that
19 one or more of the means or methods described in
20 the indictment were agreed upon to be used in an
21 effort to effect or accomplish some object or
22 purpose of the conspiracy as charged in the
23 indictment. And that two or more persons,
24 including one or more of the accused -- in this
25 case the accused -- was knowingly a member of the

1 conspiracy, as charged in the indictment.

2 One may become a member of the conspiracy
3 without full knowledge of all the details of the
4 conspiracy. On the other hand, a person who has
5 no knowledge of the conspiracy, but happens to
6 act in a way which furthers some object or
7 purpose of the conspiracy, does not thereby
8 become a member, or become a conspirator.

9 I will read that over more carefully -- I
10 hesitated in the middle of the paragraph, and
11 made it not too clear.

12 One may become a member of a conspiracy
13 without full knowledge of all the details of
14 the conspiracy. On the other hand, a person who
15 has no knowledge of the conspiracy but happens to
16 act in a way which furthers some object or purpose
17 of the conspiracy does not thereby become a
18 conspirator.

19 Before the jury may find that a defendant
20 or any other person has become a member of a
21 conspiracy, the evidence in the case must show
22 beyond a reasonable doubt that the conspiracy was
23 knowingly formed, and that the defendant or other
24 person who is claimed to have been a member
25 willfully participated in the unlawful plan with

1 the intent to advance or further some object or
2 purpose of the conspiracy.

3 To act or participate willfully means to
4 act or participate voluntarily and intentionally,
5 and with specific intent to do something which
6 the law forbids, or with specific intent to fail
7 to do something the law requires to be done.
8 That is to say, to act or participate with a bad
9 purpose, either to disobey or to disregard the
10 law. So, if a defendant or any other person,
11 with understanding of the unlawful character of
12 a plan, knowingly encourages, advises, or assists,
13 for the purpose of furthering the undertaking or
14 scheme, he thereby becomes a willful participant:
15 a conspirator.

16 One who willfully joins an existing
17 conspiracy is charged with the same responsibility
18 as if he had been one of the originators or
19 instigators of the conspiracy.

20 In determining whether a conspiracy existed,
21 the jury should consider the actions and
22 declarations of all of the alleged participants.
23 However, in determining whether a particular
24 defendant was a member of the conspiracy, if any,
25 the jury should consider only his acts and

1 statements. He cannot be bound by the acts or
2 declarations of other participants until it is
3 established that a conspiracy existed, and that
4 he was one of its members.

5 Whenever it appears beyond a reasonable
6 doubt from the evidence in the case that a
7 conspiracy existed, and that the defendant was
8 one of the members, then the statements thereafter
9 knowingly made, and the acts thereafter knowingly
10 done by any person likewise found to be a member,
11 may be considered by the jury as evidence in the
12 case as to the defendant found to have been a
13 member; even though the statements and acts may
14 have occurred in the absence and without the
15 knowledge of the defendant, provided such
16 statements and acts were knowingly made and done
17 during the continuance of such conspiracy, and
18 in furtherance of some object or purpose of the
19 conspiracy.

20 Otherwise, any admission or incriminatory
21 statement made, or act done outside of court by
22 one person may not be considered as evidence
23 against any person who was not present and did
24 not hear the statement made, or see the act done.

25 Therefore, statements of any conspirator,

1 which are not in furtherance of the conspiracy,
2 or made before its existence, or after its
3 termination, may be considered as evidence only
4 against the person making them.

5 In your consideration of the evidence in the
6 case as to the offense of conspiracy charged, you
7 should first determine whether or not the
8 conspiracy existed, as alleged in the indictment.
9 And if you conclude that the conspiracy did
10 exist, you should next determine whether or not
11 the accused willfully became a member of the
12 conspiracy.

13 If it appears beyond a reasonable doubt
14 from the evidence in the case that the
15 conspiracy alleged in the indictment was willfully
16 formed and that a defendant willfully became a
17 member of the conspiracy, either at its inception
18 or afterwards, then there may be a conviction,
19 even though the conspirators may not have
20 succeeded in accomplishing their common object
21 or purpose, and in fact may have failed in so doing.

22 The extent of any defendant's participation,
23 moreover, is not determinative of his guilt or
24 innocence. A defendant may be convicted as a
25 conspirator even though he may have played only a

1 minor part in the conspiracy.

2 So, in the first count against the two
3 named defendants, one of whom is on trial, Ortiz,
4 the indictment charges a conspiracy between
5 Melendez and Ortiz, and other persons unknown
6 to the grand jury.

7 A person cannot conspire with himself alone,
8 and thereafter you cannot find a defendant guilty
9 unless you find beyond a reasonable doubt that
10 he participated in the conspiracy as charged
11 with at least one other person, whether such
12 person is a defendant or not, and whether named
13 in the indictment or not.

14 In other words, the nature of a conspiracy
15 is a combination that requires at least two
16 participants, as alleged and set forth in the
17 complaint or indictment, the accusation.

18 The second count against the defendant
19 charges that: "On February 10, 1976, at Hartford,
20 the same two, Melendez and Ortiz, knowingly and
21 intentionally did possess, with intent to
22 distribute, a quantity of cocaine, in violation
23 of the law.

24 That portion of the statute which this count
25 applies to reads in part:

1 "Except as authorized by this subchapter,
2 it shall be unlawful for any person knowingly
3 or intentionally to distribute or dispense or
4 possess, with intent to distribute, or dispense
5 a controlled substance."

6 Now, cocaine is a crystalline alkaloid
7 which is derived and obtained from cocoa leaves.
8 Title 21, Section 812 of the United States Code
9 lists cocaine as a controlled substance or drug.

10 There are four essential elements required
11 to be proven by the Government in order to
12 establish the offense charged in the second count.

13 First, that the substance involved was, in
14 fact, cocaine;

15 Second, that the defendant did, in fact,
16 have knowing possession of cocaine;

17 Third, that his possession was had with
18 intent to distribute or dispense said cocaine;
19 and that

20 Fourth, that his act or acts were knowingly
21 and intentionally carried out.

22 With respect to the first element, I have
23 defined the term "cocaine" as a matter of law.
24 I instruct you that cocaine is included within
25 Section II of Title 21, Section 812. Therefore,

1 if you find that cocaine was involved, then you
2 will find that the first element has been proven
3 by the Government.

4 You have heard the testimony of the
5 Government chemist, who testified here, relative
6 to the nature of the substance as he found it.

7 With respect to the second element, the law
8 recognizes two kinds of possession: actual
9 possession and constructive possession. A person
10 who knowingly has direct physical control over
11 a thing at a given time is then in actual
12 possession of it.

13 A person who, although not in actual
14 possession, knowingly has both the power and the
15 intention, at a given time, to exercise
16 dominion or control over a thing, either directly,
17 or through another person or persons, is then in
18 constructive possession of it.

19 The law recognizes also that possession may
20 be sole or joint. If one person alone has actual
21 or constructive possession of a thing, possession
22 is sole. If two or more persons share actual
23 or constructive possession of a thing, possession
24 is joint.

25 You may find that the element of possession,

1 as that term is used in these instructions, is
2 present if you find beyond a reasonable doubt that
3 the defendant had actual or constructive
4 possession, either alone or jointly with others.

5 In order to prove the third element, the
6 Government must prove that the defendant possessed
7 said controlled drug with intent to distribute
8 or dispense the same.

9 Intent ordinarily may not be proved directly,
10 because there is no way of fathoming or
11 scrutinizing the operations of the human mind.
12 You may infer a defendant's intent from the
13 surrounding circumstances. And you may consider
14 any statement made and done or omitted by the
15 defendant, and all other facts and circumstances
16 in evidence which indicate his state of mind. It
17 is ordinarily reasonable to infer that a person
18 intends the natural and probable consequences
19 of acts knowingly done or knowingly omitted.

20 You may, but you are not obligated, to draw
21 an inference from the amount of the cocaine seized,
22 if you should find that the defendants, or either
23 of them, had knowing possession of it, and that
24 it was intended to be distributed or dispensed
25 for sale.

1 With respect to the fourth element, the
2 Government must prove that the defendant's act
3 or acts were knowingly and intentionally carried
4 out.

5 To do something knowingly is to do it
6 voluntarily and intentionally, and not because
7 of mistake or accident or other innocent reason.

8 The purpose of adding the word "knowingly"
9 is to insure that no one would be convicted for
10 an act done because of mistake or accident, or
11 other innocent reason.

12 It is for you, the jury, to determine
13 whether or not all four of the elements of the
14 crime charged in the second count have been proven
15 by the Government beyond a reasonable doubt. On
16 your findings shall be determined the guilt or
17 innocence of the defendant, Ortiz, on this count.

18 The third count, the final count of the
19 indictment, charges, and I quote:

20 "On February 10, 1976, at Hartford, in the
21 District of Connecticut, Enrique Melendez and
22 Jesus Ortiz, the defendants herein, knowingly
23 and intentionally did distribute a quantity of
24 cocaine, a Schedule II controlled substance, in
25 violation of Title 21, United States Code,

1 Section 841(a)(1)."

2 The same statute that I read to you as
3 being applicable to the second count is
4 applicable to this count.

5 The elements required to be proved by the
6 Government in this count are:

7 First, that the substance involved in the
8 sale or transaction was, in fact, cocaine;

9 Second, that the defendant did, in fact,
10 distribute said cocaine; and

11 Third, that the defendant's act or acts
12 were knowingly and intentionally carried out.

13 The same proof required in the first and
14 fourth elements of the second count are required
15 with respect to the first and third elements of
16 this, the third count.

17 In order to prove the second element, the
18 Government must prove not only that the defendant
19 possessed said controlled drug with intent to
20 distribute or dispense the same, but that he did,
21 in fact, dispense and distribute said cocaine,
22 as alleged.

23 As I previously pointed out, intent
24 ordinarily may not be proven directly, because
25 there is no way of fathoming or scrutinizing the

1 operations of the human mind. But, you may
2 infer a defendant's intent from the surrounding
3 circumstances. You may consider any statements
4 made and done or omitted by a defendant, and all
5 other facts and circumstances in evidence which
6 indicate his state of mind. It is ordinarily
7 reasonable to infer that a person intends the
8 natural consequences of facts knowingly done,
9 and knowingly omitted.

10 With respect to this second element, the
11 Government must prove that the defendant did
12 actually distribute and dispense said controlled
13 drug.

14 In other words, the Government's proof
15 concerned is not directed at simple possession
16 of the controlled drug; rather, it alleges that
17 the defendant did actually distribute and
18 dispense or sell a controlled drug, namely,
19 cocaine.

20 Therefore, it is incumbent upon the
21 Government to prove that the defendant did, in
22 fact, distribute or dispense and sell the cocaine.

23 In the indictment it is alleged that a
24 particular amount or quantity of cocaine was
25 involved. The evidence in the case need not

1 establish that the amount or quantity of cocaine
2 was as alleged in the indictment, but only that
3 some measurable amount of cocaine was in fact
4 the subject of the acts charged in the indictment.

5 You will, of course, first ascertain whether
6 or not the substance in question is in fact
7 cocaine, as alleged. And in so doing you will
8 consider all evidence in the case which may aid
9 determination of that issue, including the
10 testimony of any expert or chemist, or other
11 witness who may have testified either to support
12 or to dispute the allegation that the substance
13 in question is cocaine, as charged.

14 Now, credibility of witnesses.

15 You, as jurors, are the sole judges of the
16 credibility of the witnesses, and the weight
17 their testimony deserves.

18 You should carefully scrutinize the
19 testimony given, the circumstances under which
20 each witness has testified, and every matter in
21 evidence which tends to indicate whether the
22 witness is worthy of belief.

23 Consider each witness' intelligence,
24 motive and state of mind, and demeanor and manner
25 while on the witness stand. Consider also any

1 relation which each witness may bear to either
2 side of the case; the manner in which each witness
3 might be affected by the verdict, and the extent
4 to which, if at all, each witness is either
5 supported or contradicted by other evidence.

6 Inconsistencies or discrepancies in the
7 testimony of a witness, or between the testimony
8 of different witnesses, may or may not cause the
9 jury to discredit such testimony. Two or more
10 persons witnessing an incident or a transaction
11 may see or hear it differently; an innocent
12 misrecollection, like failure of recollection,
13 is not an uncommon experience.

14 In weighing the effect of a discrepancy,
15 consider whether it pertains to a matter of
16 importance, or an unimportant detail; whether the
17 discrepancy results from innocent error or from
18 willful falsehood.

19 All evidence of a witness whose self-interest
20 or attitude is shown to be such as might tend to
21 prompt testimony unfavorable to the accused,
22 should be considered with caution and weighed
23 with great weight.

24 A witness may be discredited or impeached
25 by contradictory evidence, or by evidence that at

1 other times the witness has made statements which
2 are inconsistent with the witness' present
3 testimony.

4 If you believe any witness has been
5 impeached, and thus discredited, it is your
6 exclusive province to give the testimony of that
7 witness such credibility, if any, as you may
8 think it deserves.

9 If a witness is shown knowingly to have
10 testified falsely concerning any material matter,
11 you have a right to distrust such witness'
12 testimony in other particulars. And you may
13 reject all the testimony of that witness, or
14 give it such credibility as you may think it
15 deserves.

16 There was testimony here from law enforcement
17 officers in this case. Officer Valentin. The
18 testimony of a law enforcement officer is
19 entitled to no special or exclusive sanctity,
20 merely because it comes from a law enforcement
21 officer.

22 A law enforcement officer who takes the
23 witness stand subjects his testimony to the same
24 examination and the same tests as any other
25 witness does. And in the case of such officer you

1 should not believe him merely because he's a
2 law enforcement officer. You should evaluate
3 his testimony as you do that of any other witness.

4 The rules of evidence ordinarily do not
5 permit witnesses to testify as to opinions or
6 conclusions. An exception to this rule exists
7 as to those whom we call expert witnesses.
8 Witnesses who, by education and experience, have
9 become expert in some art, science, profession,
10 or calling, may state an opinion as to relevant
11 and material matters in which they profess to
12 be experts, and may also state their reasons for
13 their opinions.

14 The witness, Jack Fasanello, the chemist,
15 who testified in this case, would be a so-called
16 expert witness.

17 You should consider his opinion and give it
18 such weight as you may think it deserves. If
19 you should decide that his opinion is not based
20 upon sufficient education and experience, or
21 if you should conclude that the reasons given
22 in support of his opinion are not sound, or that
23 his opinion is outweighed by other evidence, you
24 may disregard the opinion entirely.

25 You have heard the testimony of

1 Mr. Luis P. Lopez, the Government informant. The
2 testimony of an informant who provides evidence
3 against a defendant for pay, must be examined
4 and weighed by the jury with greater care than
5 the testimony of an ordinary witness.

6 The jury must determine whether the
7 informant's testimony has been affected by
8 self-interest, or by prejudice against the
9 defendant, or for monetary or other gains or
10 benefits.

11 In considering the testimony of the witness,
12 Lopez, you recall there was testimony about his
13 prior criminal record. I call your attention
14 to the fact that the testimony of a witness may
15 be discredited or impeached by showing that the
16 witness has been convicted of a felony; that is,
17 a crime punishable by imprisonment for a term
18 of one year or more.

19 Prior conviction does not render a witness
20 incompetent to testify, but it is merely a
21 circumstance which you may consider in determining
22 the credibility of that witness. It is solely
23 within the province of the jury to determine the
24 weight to be given any prior conviction as
25 impeachment of his credibility.

1 The law does not compel a defendant in a
2 criminal case to take the witness stand and
3 testify. And no presumption of guilt may be
4 raised, and no inference of any kind may be
5 drawn, from the failure of the defendant,
6 Jesus Ortiz, to testify.

7 As stated before, the law never imposes
8 upon a defendant in a criminal case the burden
9 or duty of calling any witnesses, or producing
any evidence

11 The verdict must represent the considered
12 judgment of each juror. In order to return a
13 verdict it is necessary that each juror agree
14 thereto. In other words, your verdict must be
15 unanimous.

16 It is your duty as jurors to consult with
17 one another, and to deliberate with a view to
18 reaching an agreement, if you can do so without
19 violence to individual judgment. Each of you
20 must decide the case for yourself, but do so
21 only after an impartial consideration of the
22 evidence with your fellow jurors.

23 In the course of your deliberations do not
24 hesitate to reexamine your own views and change
25 your opinion if convinced it is erroneous. But,

1 do not surrender your honest conviction as to
2 the weight or effect of evidence solely because
3 of the opinion of your fellow jurors, or for
4 the mere purpose of returning a verdict.

5 Upon retiring to the jury room you will
6 select one of your number as a foreman, or a
7 forelady, or a foreperson. And the foreman
8 will preside over your deliberations, as a
9 chairman, or chairperson would in the deliberations
10 of a committee.

11 After you have selected such a foreman or
12 chairperson, you will refrain from considering
13 the case until the Clerk brings in to you the
14 copy -- the original indictment, and the
15 exhibits which have been admitted here in
16 evidence.

17 And the reason for that is because after
18 you have retired either counsel may ask the
19 Court to state something more fully, more
20 clearly, or even correct some of the portions
21 of the charge related to this particular offense.

22 If the Court is of the opinion that any
23 such observation is proper, the Court might
24 recall you within a few moments, and give you
25 such corrections, or elucidate further upon

1 certain aspects that either counsel may request.

2 However, when the Clerk brings in to you
3 these exhibits, and the indictment, you may
4 then proceed to conclusion with your deliberations.

5 Now, it is approximately 12:15, and we will
6 proceed with your deliberations until one o'clock,
7 at which time I will ask the Bailiff or
8 Marshal and the Clerk -- so that there will be
9 two people in there at all times -- to go and
10 take your order for lunch -- unless you conclude
11 your duties before that time.

12 But, if not, at one o'clock we will ask
13 the Marshal and the Clerk to go in and take your
14 orders for lunch, and it will be brought back to
15 you in the jury room.

16 And while the Marshal or the Bailiff and
17 the Clerk are in the jury room at one o'clock
18 to take your order, or when they are delivering
19 your order, do not discuss the case whatsoever,
20 or make any comment to them, other than
21 pertaining to your luncheon order.

22 The jury may now retire.

23 (In the absence of the jury:)

24 THE COURT: Does the Government have any
25 exceptions to note for the record?

1 MR. SMITH: None, your Honor.

2 THE COURT: Counsel for the defendant have
3 any exceptions to note for the record?

4 MR. CRAMER: Yes, I do, your Honor.

5 I didn't ask for an instruction concerning
6 the lack of defendant's testimony, or testifying
7 in this case, and I think it is prejudicial.
8 I think it points up the failure to testify.

9 I move for a mistrial at this point,
10 because I didn't know it was going to be given.
11 I move for a mistrial.

12 THE COURT: Denied.

13 Anything else?

14 MR. CRAMER: I have nothing else, your Honor.

15 THE COURT: Will counsel view the form of
16 the indictment and the exhibits which are before
17 the Court, to see if they are in order to be sent
18 into the jury room?

19 MR. SMITH: Fine with the Government, your
20 Honor.

21 MR. CRAMER: Okay, your Honor, fine.

22 THE COURT: Before we send them in I want
23 to ask the interpreter -- on one page I noted
24 I used the term "cocaine".

25 It is printed here "heroin". My stenographer

1 didn't correct it.

2 Did you use the word "cocaine"?

3 THE INTERPRETER: Yes, your Honor, I did.

4 THE COURT: Very well.

5 (Pause.)

6 THE CLERK: The jurors have the indictment
7 and the exhibits, your Honor.

8 THE COURT: The Court will stand in recess.

9 (Court was in recess until 2:00 p.m., when
10 the jury returned with their verdict.)

11 (In the presence of the jury:)

12 THE CLERK: Will the defendant please rise?

13 Ladies and gentlemen of the jury, have you
14 agreed upon a verdict?

15 THE FOREMAN: We have, your Honor.

16 THE CLERK: Will the foreman please identify
17 himself by name, for the record?

18 THE FOREMAN: Tom Walasewicz.

19 THE CLERK: What is your verdict on Count 1?

20 THE FOREMAN: Guilty.

21 THE CLERK: What is your verdict on Count 2?

22 THE FOREMAN: Guilty.

23 THE CLERK: What is your verdict on Count 3?

24 THE FOREMAN: Guilty.

25 THE CLERK: Ladies and gentlemen, kindly

1 JULY 27, 1976:

2 (In the presence of the jury:)

3 R A F A E L V A L E N T I N, appearing as
4 a witness, being duly sworn, testified as follows:

5 THE CLERK: Would you state your full name?

6 THE WITNESS: Rafael Valentin.

7 THE CLERK: Your address, Mr. Valentin?

8 THE WITNESS: 294 Colony Street, Meriden.

9 DIRECT EXAMINATION BY MR. SMITH:

10 Q Mr. Valentin, are you employed?

11 A Yes, I am.

12 Q Would you tell the members of the jury what you do
13 for a living?

14 A I am employed by the Connecticut State Police
15 Department.

16 Q How long have you been a Connecticut State Trooper?

17 A Eight and a half years.

18 Q Are you a uniformed State Trooper?

19 A Not at the present time, no.

20 Q At the present time do you work in any particular
21 type of case?

22 A Narcotics investigations.

23 Q How long have you worked on narcotics cases?

24 A Eight and a half years.

25 Q I'm sorry; I didn't hear you.

- 1 Q How long have you known Mr. Lopez?
- 2 A Eight or nine months.
- 3 Q Have you ever had occasion to work with Mr. Lopez?
- 4 A Yes, I have.
- 5 Q Tell the members of the jury about how many times
- 6 you have worked with Mr. Lopez?
- 7 A 20, 25 times.
- 8 Q And can you estimate the number of days that you
- 9 have worked with him?
- 10 A I would say since October, three to four days a
- 11 week.
- 12 Q As a result of your work with Mr. Lopez have you
- 13 made or developed any narcotics cases?
- 14 A Yes, I have.
- 15 Q Is Mr. Lopez a police officer?
- 16 A No, he's not.
- 17 Q Tell the members of the jury just exactly what
- 18 Mr. Luis Lopez does?
- 19 A Luis Lopez furnished us the information regarding
- 20 narcotics investigations.
- 21 Q Is it fair to say he is a confidential informant?
- 22 A Definitely, yes.
- 23 Q What exactly is the function of a confidential
- 24 informant, particularly Luis Lopez?
- 25 A Well, to furnish information regarding narcotics

1 Q Does Enrique Melendez, to your knowledge, have a
2 nickname?

3 A Yes, he does.

4 Q What is that nickname, if you know?

5 A Kiki.

6 Q Kiki Melendez?

7 A Yes.

8 Q Have you ever met Kiki Melendez before?

9 A I have met him, yes.

10 Q Is Kiki his real name?

11 A No, that's a nickname.

12 Q Do you know where Kiki Melendez lives?

13 A Yes, I do.

14 Q Where does he live?

15 A 15 Cabot Street.

16 Q Whereabouts is that?

17 A In Hartford.

18 Q Do you know what relationship, if any, Kiki
19 Melendez is to Jesus Ortiz?

20 A I believe his brother-in-law.

21 Q His brother-in-law? Do you know whether Kiki
22 Melendez himself has an older brother?

23 A Yes, he does.

24 Q What is the name of that older brother?

25 A Frankie.

1 Q Frankie Melendez?

2 A Yes.

3 Q And what is Frankie's real name, if you know?

4 A I don't remember.

5 Q Now, do you know where Frankie Melendez lives?

6 A No, I don't. I was told that he was staying at
7 a hotel.

8 Q Do you know where he hangs out, any particular
9 spot?

10 A Spanish Bar.

11 Q Any other particular spot?

12 A 15 Cabot Street.

13 Q 15 Cabot Street? Do you know where Mr. Ortiz
14 lives?

15 A Yes, I do.

16 Q Where does he live?

17 A 15 Cabot Street.

18 Q The same building with Mr. Kiki Melendez?

19 A Yes.

20 Q Now, directing your attention to February 9th,
21 1976, did you have occasion to see Kiki Melendez on that
22 date?

23 A Yes, I did.

24 Q Would you tell the members of the jury who, if
25 anyone else, was with you when you saw Kiki Melendez?

1 A Luis Lopez.

2 Q Mr. Lopez?

3 A Yes.

4 Q And where did you first see Kiki Melendez on
5 February 9th, 1976?

6 A I saw him in the hallway of the second floor
7 hallway of 15 Cabot Street.

8 Q Now, can you describe for the members of the jury
9 the type of building that 15 Cabot Street is?

10 A It is a multi-family brick building.

11 Q An apartment house?

12 A Apartment house.

13 Q And can you estimate how many families live in it?

14 A About six.

15 Q Whereabouts in this building did you and Mr. Lopez
16 meet Kiki Melendez on February 9th, 1976?

17 A In the hallway of the second floor hallway.

18 Q And what was your purpose in going to 15 Cabot
19 Street?

20 A To purchase narcotics.

21 Q To purchase narcotics? What kind of narcotics?

22 A Cocaine.

23 Q To purchase narcotics from any particular person?

24 A Yes, from Frankie Melendez.

25 Q From Frankie Melendez, the older brother of Kiki?

1 A Yes.

2 Q And the brother-in-law of Mr. Ortiz?

3 A Yes, sir.

4 Q Now on February 9th, 1976 did you engage in any
5 kind of conversation with Kiki Melendez?

6 A Yes, we asked where Frankie -- when we went there
7 the door was open to the apartment. We asked --

8 THE COURT: You say "we went there"; who
9 constituted "we"?

10 THE WITNESS: Mr. Luis Lopez and myself,
11 your Honor.

12 And the door was open there with two females
13 there, inside the apartment. We asked where
14 Frankie was, and they --

15 MR. CRAMER: Objection, your Honor. It calls
16 for a hearsay answer.

17 THE COURT: What they responded is objection-
18 able. As a result of that conversation, what did
19 you do?

20 THE WITNESS: We started to leave the area.

21 BY MR. SMITH:

22 Q Did you see Frankie Melendez?

23 A He came out and asked who is asking for Frankie.

24 Q For Frankie?

25 A Kiki, I mean.

1 Q Kiki came out and said who is asking --

2 MR. CRAMER: Objection. I move to strike
3 that answer on the same grounds.

4 MR. SMITH: Your Honor, I respectfully
5 submit that the Court ought to permit it. It falls
6 clearly within the co-conspirator rule.

7 MR. CRAMER: I would like to argue it.

8 THE COURT: Well, it isn't clear to me yet
9 who he spoke to. Whether it was Frankie, or
10 whether it was Kiki.

11 Let's establish that first.

12 THE WITNESS: We spoke with Kiki.

13 THE COURT: And he is one of the defendants
14 here in the conspiracy charge, the first count?

15 MR. SMITH: That's correct.

16 MR. CRAMER: That's correct.

17 THE COURT: As it relates to the first count,
18 do you have objection?

19 MR. CRAMER: Yes, I do, your Honor.

20 THE COURT: What is the objection?

21 MR. CRAMER: Could I approach the Bench and
22 make the objection?

23 THE COURT: Yes.

24 (The following transpired at the Bench:)

25 MR. CRAMER: The objection, of course, is that

1 the answer would be hearsay. If it comes within
2 the co-conspirator exception to the rule, then I
3 have a number of more specific objections.

4 First of all, before we can get a hearsay
5 answer, the exception to the hearsay rule; you
6 first have to establish conspiracy. Secondly,
7 the conspiracy in the indictment talks about a
8 conspiracy on February 10th. We are talking about
9 a statement made on February 9th. In other words,
10 before the existence of the conspiracy.

11 I know it is "on or about", but as I
12 understand it from the Government's investigation
13 file, the conspiracy didn't arise until
14 February 10th.

15 I don't know what Mr. Smith's representations
16 are, but I understood all along that a conspiracy
17 started and terminated on February 10, 1976. So,
18 even if there were independent evidence of a
19 conspiracy, this wouldn't be made during the
20 course of and during the furtherance of the
21 conspiracy.

22 In other words, it wasn't made during the
23 course -- wasn't made during the conspiracy, and
24 wasn't made in furtherance of the conspiracy. And
25 there is no independent evidence of the conspiracy.

1 Furthermore, I make an objection on the
2 Sixth Amendment, the right to confront this
3 witness. And I think that is an open question as
4 to the Dutton case. He's going to testify
5 concerning very material statements.

6 THE COURT: Who is?

7 MR. CRAMER: Mr. Valentin. And the
8 statements made by Kiki Melendez -- and I don't
9 have the opportunity to cross examine him.

10 THE COURT: You can subpoena him.

11 MR. CRAMER: He'll take the Fifth Amendment.

12 THE COURT: That's something we don't know
13 until he arrives here.

14 You represent that you will establish a
15 conspiracy between Melendez and Ortiz?

16 MR. SMITH: I most certainly do, your Honor.

17 THE COURT: Objection overruled, as to the
18 first count.

19 MR. CRAMER: Would your Honor make a cautionary
20 instruction that if the Government fails to present
21 independent evidence of a conspiracy, that the
22 statements --

23 THE COURT: It will be subject to a motion to
24 strike.

25 MR. CRAMER: I think the Second Circuit said

1 that there should be a cautionary instruction at
2 this point to the jury, so that it fully
3 understands why the hearsay is coming in, and the
4 condition of it.

5 THE COURT: I will try and state it to them.

6 MR. CRAMER: Thank you, your Honor.

7 (The following transpired in open court:)

8 THE COURT: The objection was made by defense
9 counsel as to the statements made by the other
10 defendant, Kiki Melendez, to this witness, which
11 statements were made out of the presence of the
12 defendant, Ortiz.

13 Normally that would be considered hearsay
14 evidence. Except that the prosecutor has
15 represented to the Court, in answer to the Court's
16 inquiries of him, that the Government will
17 establish a conspiracy, from the evidence, between
18 Melendez and the defendant, Ortiz.

19 In the event that the Government fails to
20 establish a conspiracy, then of course any
21 testimony of a hearsay nature would be subject to
22 a motion to dismiss, or to strike, rather, at
23 which time the Court would so instruct the jury,
24 and ask that they disregard any hearsay testimony --
25 and, more specifically, answers to specific

1 questions -- if the Government does not meet the
2 burden in that respect.

3 So the Court cautions the jury to keep in
4 mind that statements made outside the presence of
5 the defendant, Ortiz, by others, are normally
6 hearsay evidence, and normally not valid evidence.

7 But the Court is allowing it in this
8 instance because the Government has represented
9 that it will establish the conspiracy under
10 Count 1. And it is being admitted under Count 1
11 only as to the defendant Ortiz.

12 You may proceed.

13 MR. CRAMER: Your Honor. I would like to
14 voice an objection to the wording of the
15 cautionary instruction. I think the instruction
16 should be that the Government must not only
17 establish conspiracy in order for the jury to
18 consider the hearsay --

19 MR. SMITH: I object to this argument, your
20 Honor.

21 THE COURT: I think it has been made clear
22 enough. In the event they don't establish the
23 conspiracy you can move to quash the hearsay
24 evidence, and the Court would normally grant your
25 motion.

1 MR. CRAMER: The additional phrase I think
2 should be added: "Established by a fair
3 preponderance of the evidence."

4 THE COURT: I think the jury will understand
5 it clearly.

6 MR. CRAMER: I think it can be explained
7 and elaborated a little more clearly.

8 THE COURT: The Court thinks it has been
9 elaborated on sufficiently.

10 Proceed.

11 BY MR. SMITH:

12 Q Trooper Valentin, I believe you had a conversation
13 with Kiki Melendez on the afternoon of February 9, 1976; is
14 that correct?

15 A Yes.

16 Q Mr. Luis Lopez was present with you during that
17 conversation; is that correct?

18 A Yes.

19 Q What if anything was said to Kiki Melendez about
20 your purpose in being there?

21 A We told him we wanted to buy a quarter piece of
22 cocaine.

23 THE COURT: Say that again? It isn't clear
24 to me.

25 THE WITNESS: He asked me --

1 THE COURT: State the name of who said what,
2 because we are dealing with two or three people.

3 THE WITNESS: Kiki Melendez asked us who was
4 looking for Frankie --

5 THE COURT: Who did he speak to, you or your
6 friend?

7 THE WITNESS: He said it in general, your
8 Honor.

9 THE COURT: All right.

10 THE WITNESS: And Luis Lopez answered "I am."
11 And he told us that -- Kiki told us that Frankie
12 was not around.

13 BY MR. SMITH:

14 Q You said about a quarter of a piece. What did you
15 tell Frankie --

16 A He asked me what we --

17 Q Excuse me. What did you tell Kiki about a quarter
18 piece?

19 A We wanted to buy a quarter piece of coke.

20 Q Of coke? Coke is a nickname for what?

21 A Cocaine.

22 Q Would you tell the members of the jury what
23 exactly is a quarter piece? What does the term "piece" mean?

24 MR. CRAMER: Objection. It calls for expert
25 testimony.

1 cocaine?

2 A 20 bucks.

3 Q \$20? And it is a very small bag?

4 A Yes.

5 Q How many bags are there, if you know, in a quarter
6 piece?

7 A Approximately 75 bags -- 75 to 100 bags.

8 Q Now you told Kiki Melendez you wanted a quarter
9 piece of cocaine?

10 A Yes.

11 Q What if anything did Kiki Melendez say to you and
12 Luis Lopez on February 9th, 1976?

13 MR. CRAMER: Objection, your Honor, for the
14 record. I want to make an objection to the whole
15 line of questioning, for the same reason stated
16 previously.

17 THE COURT: Same ruling.

18 BY MR. SMITH:

19 Q What did Kiki Melendez say to you and Mr. Lopez?

20 A That Frankie had sold a piece in the morning, and
21 had the rest under lock and key, and that he, Kiki, had only
22 bags.

23 We told him we wanted to buy bags, and we left.

24 Q Did he say anything about his willingness to deal
25 in bags?

1 A He mentioned the fact that he would not deal to
2 me, because he didn't know me.

3 Q Kiki Melendez said he would not deal to you?

4 A Right.

5 Q Did he indicate whether he would deal to someone
6 else?

7 A Yes, he would deal to Luis, yes.

8 Q And he said this right in front of you?

9 A I overheard it, yes.

10 Q What if anything did you and --

11 THE COURT: Excuse me. Did he speak in English
12 or Spanish?

13 THE WITNESS: Spanish.

14 BY MR. SMITH:

15 Q You had no problem understanding Kiki Melendez'
16 Spanish?

17 A No, sir.

18 Q Did you have any problem understanding Mr. Lopez
19 in Spanish?

20 A No, sir.

21 Q What if anything did you and Mr. Lopez do after
22 you had this conversation with Kiki Melendez at 15 Cabot
23 Street, on the afternoon of February 9th?

24 A We left the area.

25 Q You left the area? Where did you go, if anywhere?

1 Q Now, what happened at the Span'ish Bar?

2 A Well, we parked across the street from the bar on
3 Chestnut Street.

4 Q You and Mr. Lopez?

5 A Yes. And we engaged other people there, that we
6 had known, in conversation. And a few minutes later we
7 observed Kiki across the street from us, and he walked toward
8 our car, and stood on the passenger side of the car.

9 I overheard him tell Mr. Lopez that if we wanted
10 to buy bags, to go to him, for him to go alone, not to take
11 me with him.

12 Q You went to the Spanish Bar and saw Kiki Melendez
13 again?

14 A Yes, sir.

15 Q And he came over to the car?

16 A Yes, sir.

17 Q And you and Mr. Lopez were in the car?

18 A Yes, sir.

19 Q And Kiki Melendez again said, in your presence,
20 that he would deal with Mr. Lopez?

21 A Yes, sir.

22 Q Did he say anything about you again?

23 A He wouldn't deal to me.

24 Q He said that?

25 A Well, he inferred it when he said that for him to

1 come alone, and not to bring me.

2 Q Did Kiki Melendez state why he didn't want you to
3 come along?

4 A Well, he was afraid I might be "the man", a police
5 officer.

6 Q Did he tell Mr. Lopez what to do if Mr. Lopez
7 wanted to buy dope?

8 A Yes, sir, he did.

9 Q What did he tell Mr. Lopez?

10 A To come by himself.

11 Q To come back by himself?

12 A By himself.

13 Q Did you go back to 15 Cabot Street that night?

14 A No, we did not.

15 Q Why not?

16 A It was late and we had been out on the street a
17 long time, and figured we'd call it a day.

18 Q Roughly what time was this that you had this
19 conversation with Mr. Melendez at the Spanish Bar?

20 A It was late in the afternoon.

21 Q The conversation wasn't actually in the bar itself?

22 A No, sir, it was outside.

23 Q Did you ever have occasion to go back to 15 Cabot
24 Street?

25 A Yes, sir, we did.

1 Q And when was that? When was the next time you went
2 back?

3 A The following day.

4 Q That is what date?

5 A February 10th.

6 Q Now, directing your attention to the afternoon of
7 February 10th, 1976, would you tell the members of the jury
8 what you and Mr. Lopez did that afternoon?

9 A I picked up Mr. Lopez at his home and we went to
10 a pre-arranged location, where we usually met. There the
11 search was made of Mr. Lopez. I obtained the money for
12 buys, to purchase narcotics, and we went to 15 Cabot Street.

13 THE COURT: So that we get that, you picked
14 up Lopez at his home?

15 THE WITNESS: Yes, your Honor.

16 THE COURT: You said you went to a place
17 where you usually met?

18 THE WITNESS: Yes, I meant the covering
19 officers and ourselves.

20 THE COURT: The what?

21 THE WITNESS: The covering officers, the
22 individuals that covered us while purchases were
23 made.

24 THE COURT: The covering officers?

25 THE WITNESS: Police officers.

1 Q The D.E.A.?

2 A The D.E.A.

3 Q What happened then after you gave Mr. Lopez this
4 \$180?

5 A Well, Mr. Lopez went inside the building, and a
6 few minutes later he came out again and got into the
7 passenger side of the car and handed me 15 tin foil packets.

8 Q Do you know what these 15 tin foil packets
9 contained?

10 A They contained -- well, I know they contained
11 coke.

12 MR. CRAMER: I move to strike that answer,
13 your Honor.

14 THE COURT: The answer may be stricken. There
15 was no basis yet to establish that they did
16 contain cocaine. They might have contained
17 powdered sugar, for all we know at this point.

18 BY MR. SMITH:

19 Q Mr. Lopez gave you these 15 bags?

20 A Yes, sir.

21 Q Had you ever seen bags like this before?

22 A Yes, I had.

23 Q And what did you do with these bags?

24 A I put them in my shirt pocket.

25 Q Now, between the time that you gave Mr. Lopez this

1 \$180 and the time he came back out with these 15 bags, how
2 much time elapsed?

3 A No more than five minutes.

4 Q Now, did you actually see or witness the sale of
5 these bags to Mr. Lopez?

6 A I did not.

7 Q Did you see either Kiki Melendez or Jesus Ortiz
8 on that day?

9 A I did not.

10 Q By the way, do you know whether Mr. Ortiz has a
11 nickname?

12 A Yes, sir.

13 Q What is his nickname?

14 A Chombo.

15 Q Can you spell that?

16 A C-h-o-m-b-o.

17 Q What if anything does that mean in Spanish?

18 A I haven't the slightest idea.

19 MR. CRAMER: Objection to the relevancy of
20 that question.

21 THE COURT: He answered that he doesn't know.

22 BY MR. SMITH:

23 Q And Mr. Lopez gave these 15 bags to you, and you
24 put them in your shirt pocket; is that correct?

25 A Right.

1 L U I S P L A C I D O L O P E Z, appearing
2 as a witness, being duly sworn, testified as follows:

3 THE CLERK: Would you state your full name?

4 THE WITNESS: Luis Placido Lopez.

5 THE CLERK: Your address?

6 THE WITNESS: 294 Colony Street, Meridan,
7 Connecticut.

8 DIRECT EXAMINATION BY MR. SMITH:

9 Q Mr. Lopez, I'm going to ask you to speak slowly
10 and keep your voice up, if you possibly can, so the two
11 ladies down at the end of the jury box can hear you, and
12 we'll know everybody in the jury has heard you too, okay?

13 I will.

14 Q Would you state your full, complete name for the
15 record?

16 A Luis Placido Lopez Espinoza.

17 Q Espinoza?

18 A That's my mother's last name.

19 Q That's your mother's last name?

20 A Yes.

21 Q Is it common in the Spanish culture to take one's
22 mother's last name?

23 A Yes. In Puerto Rico you use both names, father and
24 mother's.

25 Q With a hyphen in between them?

- 1 A A what?
- 2 Q A dash in between them?
- 3 A Yes, two separate last names.
- 4 Q How old are you, Mr. Lopez?
- 5 A I'm 40 years old.
- 6 Q 40?
- 7 A Right.
- 8 Q Where were you born?
- 9 A I was born in Puerto Rico.
- 10 Q Whereabouts in Puerto Rico?
- 11 A What part? Humacao.
- 12 Q Would you tell the members of the jury what your
- 13 educational background is? Have you been to school?
- 14 A I graduated from high school, 350 Grand Street,
- 15 in New York City. Seward Park High School.
- 16 Q Seward Park High School?
- 17 A Right.
- 18 Q You have a criminal record, do you not?
- 19 A Yes, I got a criminal record.
- 20 Q Were you convicted of receiving stolen property in
- 21 1962 in New York?
- 22 A Yes.
- 23 Q Were you convicted of petty larceny in New York in
- 24 1964?
- 25 A Yes.

1 Q Were you convicted of possession of burglar tools
2 in New York in 1966?

3 A Yes.

4 Q And loitering with intent to steal -- whatever that
5 is -- in 1970?

6 A Yes.

7 Q Were you convicted of the unauthorized use of a
8 motor vehicle?

9 A Yes.

10 Q In New Jersey, in 1970?

11 A Yes.

12 Q Were you also convicted in Federal Court of driving
13 a stolen car across state lines?

14 A Yes.

15 Q And did the State of New York also prosecute you
16 for the theft of that car which was driven across state lines?

17 A Yes.

18 Q Now, this was in 1973, correct?

19 A Right.

20 Q Now, were you also convicted recently in
21 Connecticut, back in December of 1975, of threatening,
22 criminal trespass?

23 A Yes.

24 Q Now, as a result of your conviction in Federal
25 Court for driving this stolen car across state lines, were you

1 sentenced to prison?

2 A They sent me to prison, right.

3 Q Which prison were you sentenced to?

4 A Lewisburg, Pennsylvania.

5 Q How long did you serve in Lewisburg?

6 A 17 months.

7 Q 17 months out of a two year sentence?

8 A Right.

9 Q Now, had you ever been convicted in your entire

10 life of narcotics?

11 A Not in my life. I never use narcotics.

12 Q You never used narcotics in your life?

13 A Never.

14 Q Do you have any particular feelings about

15 narcotics?

16 MR. CRAMER: Objection, your Honor.

17 MR. SMITH: Your Honor, I would claim it. I
18 think it is relevant.

19 MR. CRAMER: What do his feelings have to do
20 with it?

21 THE COURT: I suppose, Counselor, it is like
22 sin; everybody doesn't love sin -- I suppose they
23 wouldn't love narcotics. I suppose that is the
24 obvious answer.

25 It is harmless; he may answer. I don't know

1 worked with him?

2 A About 25 different times.

3 Q Can you give us, in terms of days, per week, how
4 many days per week you would estimate you worked?

5 A Three or four times a week.

6 Q Since October?

7 A October.

8 Q Now, is there any particular reason why, to your
9 knowledge, you work with Rafael Valentin?

10 A Well, he's Spanish, in the first place, and he's
11 got a good reputation, and he's a good officer, and I like to
12 work with him.

13 Q You like him?

14 A Yes.

15 Q Now, does your undercover work with Rafael Valentin,
16 has it resulted in any other cases than this case?

17 A Yes.

18 Q And who has prosecuted those cases?

19 A I believe you. You are the prosecutor.

20 Q Do you know a gentleman named "Frankie" Melendez?

21 A Yes.

22 Q And do you know a gentleman named "Kiki" Melendez?

23 A Yes.

24 Q What relationship is "Frankie" Melendez to "Kiki"
25 Melendez?

1 A They are brothers.

2 Q How long have you known Frankie Melendez?

3 A Well, I've been knowing him around 1969 -- '70.

4 Q Now, do you also know the defendant, Jesus Ortiz?

5 A Well, I used to see him in the street, hanging
6 around. And I used to know him with a nickname of "Chombo".

7 Q About how long have you known Mr. Ortiz?

8 A '71-'72.

9 Q '71 or '72?

10 A Yes.

11 Q Do you know what relationship, if any, he is to
12 the Melendez brothers?

13 A Before I know what kind of relationship there
14 was --

15 Q I mean, do you know whether he is related to them?
16 That is what I am getting at.

17 A Right now, yes, I know.

18 Q What is the relationship?

19 A Brother-in-law.

20 Q Brother-in-law?

21 A Right.

22 Q So, do you know how it is that he happens to be the
23 brother-in-law of Kiki and Frankie Melendez? He married his
24 sister, for example?

25 A The way I understand, he is married to

1 for cocaine?

2 A To the two girls?

3 Q Yes.

4 A No, I asked them for Mr. Frankie Melendez.

5 Q And did you see Frankie Melendez on February 9,
6 1976?

7 A No.

8 Q Did you see Kiki Melendez on that day?

9 A Yes.

10 Q Tell the members of the jury just what happened,
11 picking it up from the time you saw those girls.

12 A Mr. Kiki Melendez came out and say "Who asking for
13 Frankie?"

14 I say "I am."

15 He say "What do you want?"

16 I say "I want to buy a quarter piece."

17 MR. CRAMER: Objection, your Honor. I am
18 going to object to this whole testimony, on the
19 same grounds before, as hearsay, not during the
20 course of the conspiracy.

21 THE COURT: Same ruling.

22 MR. CRAMER: May the record reflect I am
23 objecting to further questions on this particular
24 line?

25 THE COURT: Well, I don't like to have general

1 rulings outstanding. Your objection is to what
2 Kiki Melendez said to this witness?

3 MR. CRAMER: On February 9th.

4 THE COURT: On February 9th?

5 MR. CRAMER: That's correct.

6 THE COURT: That's the standing objection, and
7 the Court will make the same ruling.

8 BY MR. SMITH:

9 Q What did Kiki Melendez say to you?

10 A He said that he only got bags; that his brother,
11 Frankie, was out; that day earlier he had sold a piece of
12 dope and he was supposed to come back in an hour. There was
13 some more dope that was locked, and he don't have the key.

14 Q Frankie said that he had bags?

15 A Right.

16 Q You said that you were looking for a quarter piece?

17 A Right.

18 Q Who, if anyone, was with you when Frankie said this?

19 A Ralph Valentin.

20 Q Now, did Kiki say anything at all about his
21 willingness to deal, to sell cocaine to you on that day?

22 A On that day he told me that he only had bags, and
23 his brother had just sold a piece.

24 Q Did he say anything about his willingness to deal
25 with Ralph Valentin?

1 A Well, at that time he don't mention that he doesn't
2 want to sell to Ralph Valentin.

3 Q How long were you and Ralph Valentin with Kiki
4 Melendez at 15 Cabot Street on February 9, 1976?

5 A How long? About say a minute, something like that.

6 Q A short period of time?

7 A A short period of time.

8 Q What did you do, what if anything did you do after
9 you had this conversation with Kiki Melendez on February 9th?

10 A We then exit the building after the conversation.

11 Q Did you go any particular place?

12 A Yes, we went around Main Street, Albany Avenue,
13 and come, and then we stopped in front of the bar of
14 Chestnut and Albany.

15 Q Chestnut and Albany Avenue, Hartford, Connecticut?

16 A Right, Hartford, Connecticut.

17 Q What bar is that?

18 A It is a bar right on the corner. I don't know the
19 name of the bar.

20 Q Spanish bar?

21 A Spanish bar.

22 Q That's what you call it?

23 A Right.

24 Q Now, did you see Kiki Melendez again that day?

25 A Yes, we park in front of the bar, and standing on

1 the corner was Kiki Melendez.

2 Q Did you and Trooper Valentin engage in any
3 conversation with Kiki Melendez on February 9, 1976?

4 A He came over to the car. I was sitting on the
5 passenger side.

6 Q Kiki?

7 A Yes, he came over to the passenger side and told me
8 he got bags, if I want to buy some bags come over to
9 15 Cabot Street, but don't bring Ralph Valentin in, because
10 he is scared that he was a cop. He don't trust Ralph
11 Valentin.

12 Q He said this right in Valentin's presence?

13 A Yes, and he say it in a natural voice. So,
14 Trooper Valentin overheard.

15 Q Now, Trooper Valentin was sitting where?

16 A In the driver's seat.

17 Q And you were sitting on the passenger side?

18 A I was.

19 Q Kiki came over to the window?

20 A To the window, right.

21 Q And you rolled the window down?

22 A Yes.

23 Q Now, did you in fact go back to 15 Cabot Street
24 that day, February 9th?

25 A No, we finished with that day.

1 Q When was the next time you went back to 15 Cabot
2 Street?

3 A The next day, on the 10th.

4 Q Again, Mr. Lopez, taking it slowly, and with as
5 much detail as you can remember, would you please tell the
6 members of the jury what exactly happened on February 10,
7 1976?

8 A February 10, 1976 we came back to 15 Cabot Street.

9 Q You and Ralph Valentin?

10 A Me and Ralph Valentin. At that time Ralph
11 Valentin stayed in his vehicle.

12 I went inside the building, second floor again, and
13 there was a lady there.

14 I asked the lady for Mr. Frankie Melendez. While
15 I was talking to this lady a young boy, a man, came from the
16 third floor. He asked me what do I want?

17 I say "I want to purchase a quarter piece."

18 He said "Look, Kiki is sleeping."

19 Q "Sleeping"?

20 A Yes, sleeping, "and Frankie is not here."

21 So I say okay. I started to exit the building.

22 When I get to the sidewalk I heard somebody calling
23 "Hey you, come back."

24 I look up. The same kid who told me that Kiki was
25 sleeping was at the window, hollering at me.

1 I went back. When I get to the second floor there
2 was Mr. Kiki Melendez in there, with the kid.

3 He asked me what do I want? I say "Well, I want
4 to purchase a quarter piece."

5 He said "I got bags, and I got 15 bags; I give it
6 to you for \$12 apiece, or for \$180, if you want it."

7 I said "Good, let me go and get the money."

8 I left the building again. I went to Trooper
9 Valentin's car, and I told him the story. Trooper Valentin
10 then gave me \$180, and I went back in the building. When
11 I got to the second floor Mr. Kiki Melendez and the other
12 man was in there. Kiki Melendez take me up to the top
13 floor, and Mr. Chombo was with the door open, waiting.

14 Q You say Mr. Chombo?

15 A That gentleman right in there (indicating).

16 Q And you recognize the gentleman sitting over at
17 defense counsel table, that individual?

18 A Yes, it was the man who was standing at the door
19 when I came in. He invited me back inside the apartment.

20 Q Invited you inside his apartment?

21 A Yes. I went inside the living room, and right
22 behind me Mr. Kiki came in. He hollered to a woman who was
23 in the front room.

24 Q Who hollered?

25 A Mr. Chombo.

1 Q Okay.

2 A In Spanish -- he holler, he say "Bring me the
3 dope."

4 A lady came from the front room, give him an
5 aspirin box.

6 Q A little aspirin box?

7 A Yes. He open it. He count 15 bags, 15 foil bags.
8 He handed it to Mr. Kiki Melendez, who was standing next to
9 him.

10 Q Wait a minute. A woman handed Chombo --

11 A Right.

12 Q -- a little aspirin, tin box?

13 A Right.

14 Q Chombo opened up the aspirin tin, and counted out
15 15 bags?

16 A Right, and count 15 bags.

17 Q What did Chombo do with these 15 bags?

18 A He give it to Mr. Kiki Melendez.

19 Q Okay.

20 A Who was standing next to him. He told him "Count
21 them."

22 Mr. Kiki Melendez count the 15 bags, gave it to me.
23 And I gave Mr. Kiki Melendez \$180. He give it to Mr. Chombo.
24 And that was --

25 Q You gave Kiki Melendez \$180 for the 15 bags?

1 A Right.

2 Q And what did Mr. Melendez do with the \$180?

3 A Give it to Mr. Chombo, in front of me.

4 Q You say that when Mr. Ortiz opened up this aspirin
5 tin and took out the 15 foil packets he counted them?

6 A He counted them, and I was looking at him straight,
7 making the same count he was doing.

8 Q And then he handed them to -- Chombo handed the
9 bags to Kiki?

10 A Kiki.

11 Q Kiki counted them again?

12 A Counted them again, and gave them to me.

13 Q Now, when you handed the money to Kiki, did he
14 count the money?

15 A He passed it to Mr. Chombo, and Mr. Chombo started
16 counting it.

17 Q You say Mr. Chombo; you mean the defendant here?

18 A The gentleman right here.

19 Q Now, let me see if I got that straight in my mind --
20 and correct me if I'm wrong.

21 You got to 15 Cabot Street?

22 A Right.

23 Q Trooper Valentin stayed in the car?

24 A Right.

25 Q You went in?

1 A Excuse me?

2 Q Did they tell you in advance that they were going
3 to speak to the prosecutor about this arrest?

4 A I told them to do me a favor and come down and
5 talk to the prosecutor about it.

6 Q And see if they could get them dismissed? That's
7 what you asked the agents to do, right?

8 A Yes.

9 Q And that's what they did? They got a suspended
10 sentence for you?

11 A Yes.

12 Q So you now know if you get arrested again they
13 will step in and get you a suspended sentence; isn't that true?

14 A No, because if I commit a crime I'll be sent to
15 jail.

16 Q You weren't sent to jail in December of 1975, were
17 you?

18 A That doesn't mean I commit a crime I wasn't going
19 to go to jail.

20 Q But you expect them to help you out if you do
21 commit a crime?

22 A I'm not going to commit a crime.

23 Q If it ever happened you expect them to help you out?

24 A If they want to help me. It is up to them. I'm
25 not going to help me out. Whatever they want to do, it is up

1 to them.

2 Q Did you ask them to help you out in December when
3 they spoke to the prosecutor?

4 A I asked them, right.

5 Q And they immediately did it?

6 A They went down.

7 Q And because of their help you didn't go to jail?

8 A Probably because of that. Because the Judge
9 doesn't have to take -- the District Attorney or the Judge
10 doesn't have to take anything from them if they want to send
11 me to jail.

12 Q The prosecutor nolleed the criminal trespass?

13 A He knows, because the arresting officer had the
14 papers in there.

15 Q But the prosecutor was the one who nolleed the
16 criminal trespass?

17 A Yes.

18 Q And he is the one who spoke to the agents; isn't
19 that correct?

20 A Yes.

21 Q Which agents spoke to the prosecutor, do you know?

22 A Mr. Tozzi, or Mr. Valentin. I believe it was
23 Mr. Tozzi.

24 Q After they did this, did they make any statement
25 to you -- they being Mr. Valentin or Mr. Tozzi, or any of

1 those agents -- that you better help them out now because
2 they helped you out?

3 A They don't ask me for nothing. I do this
4 voluntarily. I do this for the last four years.

5 Q By voluntarily you mean you get paid?

6 A Even if I don't get paid I do it, because I hate --
7 I don't like drugs.

8 Q But you got paid how much money? You got paid from
9 the D.E.A. since you started working for them?

10 A About \$2600, something like that.

11 Q That's from --

12 A The D.E.A. only. The rest was from the State.

13 Q From the State? How much did they pay you?

14 A About \$900. \$800 or nine hundred, something like
15 that.

16 Q You got a total of about \$3500?

17 A Yes.

18 Q Is any more money owed to you?

19 A No.

20 Q That was over how long a period?

21 A Since October.

22 Q You didn't start getting paid from the D.E.A.
23 until December, right?

24 A I don't remember --

25 Q Well --

1 A Yes.

2 Q And you got paid January 23rd, \$60?

3 A Yes.

4 Q And you got paid again January 23rd, \$50?

5 A Yes.

6 Q So you don't get paid -- it is a regular interval?

7 A I don't get paid by the week, like I said before.

8 I get paid according to the information that I supply.

9 Q If you give them good information you get more
10 money?

11 A If I give them good information I could, and they
12 pay me. Otherwise I don't get nothing.

13 Q By good information, the names of people who you
14 claim sold you drugs?

15 A Not only the names, because when I work I don't
16 only bring names, I also try to make the evidence.

17 Q Try to make the evidence?

18 A Yes, I do my best to get the evidence, too.

19 Q If you give them some names and some evidence you
20 get more money?

21 A Well, they decide the money, what they going to
22 give me.

23 Q But you know that the more names and more evidence
24 you get, the more money you make, right?

25 A If there are different cases, yes.

1 Q For example, if a month went by and you didn't
2 give them any names or any evidence, you don't get paid?

3 A Don't get paid.

4 Q If the next month you gave them the names of two
5 people who sold you drugs, and some evidence, you get paid
6 some money?

7 A Right.

8 Q And the following month if you gave them the names
9 of six people, and evidence of six people, you get even more
10 money?

11 A I get more money.

12 Q Right?

13 A But not for the six people.

14 Q You get more money because you have given higher
15 quantity and quality information?

16 A Yes.

17 Q So you sort of have an incentive to go out and
18 work, like the free enterprise system: the more you give,
19 the more money you get; is that right?

20 A Yes.

21 Q Now, between February 11th and February 27th --
22 you see that on the list?

23 A February 11th and February what?

24 Q 27th, of 1976.

25 A Yes.

1 Q And in those two dates, on those two dates
2 combined, you received \$270?

3 A Yes.

4 Q \$170 on February 11th, and \$100 on February 27th?

5 A Yes.

6 Q As a matter of fact, \$170 that you got, that was
7 one of the highest payments you received, isn't it?

8 A If it is there, it is right.

9 Q That was a big pay day for you?

10 A If it is there, I say it is right.

11 MR. CRAMER: I would like to mark this for
12 identification and submit it in evidence.

13 THE COURT: Exhibit B for identification.

14 MR. SMITH: May I have some voir dire?

15 BY MR. SMITH:

16 Q Did you prepare this document, Mr. Lopez?

17 A Me?

18 Q Yes.

19 A I never write nothing. I never know how much --

20 Q Did you prepare this document?

21 A No, sir.

22 Q Do you know what all these numbers and everything
23 is?

24 A I don't know.

25 MR. SMITH: I object.

1 Q And with Frankie Melendez?

2 A Yes.

3 Q And Pedro Melendez?

4 A I know the whole family.

5 Q You are family friends?

6 A Yes.

7 MR. SMITH: I have nothing further, your Honor.

8 MR. CRAMER: Nothing further, your Honor.

9 THE COURT: Thank you.

10 (Witness excused.)

11 THE COURT: Any other witnesses?

12 MR. CRAMER: I have no other witnesses, your
13 Honor.

14 THE COURT: Does the Government have any
15 witnesses?

16 MR. SMITH: It does, your Honor.

17 Again, if Mr. Cramer and I could approach
18 the Bench for about five seconds?

19 (The following transpired at the Bench:)

20 MR. CRAMER: As I did state previously in
21 chambers, I want to renew on the record, I want to
22 call Jesus Ortiz as a witness, without the use of
23 his 1970 record to impeach him. I want to renew
24 that, and I would like a ruling in advance.

25 THE COURT: You may call him as a witness, but

1 the record may be used against him.

2 MR. CRAMER: In that case I have no other
3 witnesses to call.

4 MR. SMITH: Your Honor, I have one rebuttal
5 witness that I have subpoenaed, and that is
6 Mr. William Jeffcoat of the Connecticut State
7 Welfare Department, who has Mrs. Melendez' welfare
8 application.

9 Now, the problem is I subpoenaed that, and
10 he won't let me see what is in that application.
11 But I have reason to believe -- I know they are
12 on welfare. And I know it is a violation of the
13 Connecticut State Welfare Regulations for a woman
14 to be living with the father of the children, and
15 be receiving welfare.

16 And I know that one must make a signed,
17 sworn statement to that effect under oath.

18 THE COURT: To what effect?

19 MR. SMITH: To the effect that you were not
20 living with your husband. We have the testimony
21 of Mrs. Melendez that she has been living
22 continuously with her husband, and that the husband
23 is the father of the children. And I would like
24 to introduce that document for impeachment purposes.

25 The first thing I would like to do, your Honor,

JULY 28, 1976:

(In the absence of the jury:)

THE COURT: Does the Government have any requests to charge?

MR. SMITH: No, your Honor, it does not.

THE COURT: Has counsel seen the requests to charge of the defendant?

MR. SMITH: I have.

THE COURT: The Court advises both counsel, that except for Paragraph 8, in substance, although not in exact words, in substance the Court is going to cover the requests in general. But not Paragraph 8.

MR. CRAMER: May I be heard on a motion?

THE COURT: Certainly.

MR. CRAMER: I have two motions.

One motion is to strike all the testimony, the hearsay testimony -- well, two parts: One, to strike the hearsay testimony on February 9th. That is the statement of Kiki Melendez. The second part also is to strike all the hearsay testimony of Kiki Melendez on February 10th.

I think your Honor will recall testimony as to Kiki's out of court statements which were made, by Mr. Lopez yesterday, and there was an assertion

1 by the Assistant United States Attorney that that
2 would be independent evidence of a conspiracy,
3 which would then justify the use of the hearsay
4 statement.

5 Well, for the sake of argument, we will assume
6 that there was independent evidence of a
7 conspiracy. But, I don't think there was any
8 evidence at all that there was a conspiracy
9 existing on February 9th, or any evidence from
10 which that can be inferred.

11 There was no conspiracy until Mr. Lopez goes
12 up to the third floor on February 10th.

13 I think that absolutely the testimony of a
14 hearsay nature on February 9th should be stricken
15 and excluded.

16 And the same thing with February 10th, before
17 the time when they go up to the second floor --
18 the third floor, I'm sorry.

19 I think that all precedes the conspiracy --
20 if in fact a conspiracy was established.

21 So, if it wasn't made during the course of
22 the conspiracy it is just pure everyday hearsay,
23 and not the co-conspirator exception to the hearsay
24 rule.

25 THE COURT: The motion is denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that two copies of the Appellant's Brief and Appendix were mailed to Thomas P. Smith, Esq., Assistant United States Attorney, 450 Main Street, Hartford, Connecticut 06103, this 29th day of November, 1976.

A handwritten signature in cursive script, reading "Richard S. Cramer", written over a horizontal line.

Richard S. Cramer
Assistant Federal Public Defender